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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re RICARDO M. et al., Persons Coming  
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

L.S.,

Defendant and Appellant.

D053561

(Super. Ct. No. NJ13915A-C)

APPEAL from a judgment of the Superior Court of San Diego County, Michael Imhoff, Commissioner. Affirmed.

L.S., the maternal grandmother and former guardian of Ricardo M., Katie M. and Carlos M. (the minors), appeals a judgment of the juvenile court terminating her probate guardianship under Welfare and Institutions Code<sup>1</sup> section 728. L.S. challenges the sufficiency of the evidence to support the court's findings it was not in the minors' best

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

interests to maintain her status as their guardian. In addition, she asserts she should have received reunification services. We affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

In May 2008 the San Diego County Health and Human Services Agency (Agency) filed petitions on behalf of then seven-year-old Ricardo, five-year-old Katie and three-year-old Carlos under section 300, subdivisions (b) and (j). The petitions alleged L.S., the minors' maternal grandmother and guardian, repeatedly left the minors unsupervised and in the presence of Roman, their 12-year-old uncle. Roman physically abused Ricardo and Carlos by punching and hitting them. The petitions further alleged Roman sexually abused Katie by raping her and engaging her in oral copulation.

The Agency reported L.S. obtained custody of the minors under a probate guardianship. L.S. remained the guardian for about one year before the allegations of abuse arose. According to police reports and interviews conducted by the Agency social workers, L.S. repeatedly left the minors in the care of Roman. The social workers reported Katie disclosed to L.S. that she had been raped by Roman. L.S. told social workers she did not have knowledge of the abuse, and she did not seek any help or intervention from the police or social workers.

Roman denied abusing Katie when questioned by social workers. In his interview with the police, however, Roman admitted raping Katie and that he put his penis into her mouth on two or three occasions. He stated Katie had told L.S. about the abuse shortly after it began. Roman disclosed that L.S. responded to Katie's allegations by telling him not to hurt Katie. Roman admitted to the police the sexual abuse would probably

continue if Katie remained in the home. In an interview with social workers, Katie disclosed she had been sexually abused on at least three occasions in May 2008. Katie provided the social workers with extensive details surrounding the abuse.

Ricardo stated he was aware Roman would sometimes take Katie into a locked room. At night, Ricardo would lock the bedroom door so Roman could not hurt Katie. Ricardo also stated Roman hit him and Carlos. The social workers questioned L.S. about the physical abuse, and she denied ever seeing Roman harm any of the minors.

The court held a detention hearing in June 2008. The court made a prima facie finding on the petitions, detained the minors outside of L.S.'s home and issued a no contact order between L.S. and the minors.

According to a jurisdiction and disposition report, Ricardo told social workers both L.S. and his biological mother had hit him with a belt. Katie reported she did not want to live with L.S. because she allowed her biological mother to hit her, Carlos and Ricardo.

The Agency filed a motion to terminate guardianship under section 728. The court heard the motion at the jurisdiction and disposition hearing. Before the hearing, the Agency filed an addendum report. L.S. continued to deny knowledge of the sexual abuse.

At the July 2008 jurisdiction and disposition hearing, the court received in evidence the Agency's reports. The Agency requested the termination of L.S.'s guardianship. The court found Roman's statements as to L.S.'s knowledge of the abuse as credible. L.S. should have protected the minors and obtained assistance for Roman.

The court sustained the petitions and declared the minors dependents. The court found it was in the minors' best interests to terminate the guardianship. L.S. timely filed a notice of appeal.

## DISCUSSION

L.S. contends the court erred by terminating her guardianship of the minors and by denying her reunification services. She claims she had a strong bond with the minors and the minors did not report she had mistreated them.

### A

Section 728, subdivision (a) specifies the juvenile court's authority to terminate a probate guardianship. The juvenile court may modify or terminate a guardianship if the minor is the subject of a petition filed under section 300. The party filing the section 728 motion is "required to prove by clear and convincing evidence that termination of the guardianship was in [the minor's] best interest[s]." (*In re Alicia O.* (1995) 33 Cal.App.4th 176, 183.) The sole criterion for terminating a probate guardianship is that it is in the best interests of the minor to do so. (Prob. Code, § 1601; *In re Angel S.* (2007) 156 Cal.App.4th 1202, 1208.)

On review, we determine whether the juvenile court's decision to terminate a guardianship based on the Agency's section 728 motion is supported by substantial evidence. All reasonable inferences to support the finding must be made and the record reviewed most favorably to the order of the juvenile court. (*In re Bernadette C.* (1982) 127 Cal.App.3d 618, 624; *In re Alicia O.*, *supra*, 33 Cal.App.4th at p. 184.) We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or

evaluate the weight of the evidence. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52.)

Rather, we consider the record favorably to the juvenile court's order and affirm the order even if substantial evidence supports a contrary conclusion. (*Id.* at pp. 52-53.)

## B

The record shows it was in the minors' best interests to terminate the guardianship. The Agency's reports show L.S. regularly left the minors in the care of 12-year-old Roman when she was away from the home. The minors all reported Roman had struck or punched them on numerous occasions, and Roman admitted he raped Katie at least two times. Roman reported to the police that Katie started telling L.S. about the sexual abuse within a few weeks after Katie had been placed in L.S.'s custody. Roman said L.S. was angry with him after learning what he had done to Katie. She told him she would lose custody of the minors if child protective services found out about the abuse. L.S. continued to leave Roman in charge of supervising the minors even though she had knowledge of the abuse. Roman recalls that before L.S. would leave the house, she would tell him not to do anything to Katie. Other than this reprimand, L.S. did not protect the minors from Roman's abusive behaviors. L.S. instead continued to tell the social workers she did not know anything about the abuse. Based on these facts, the court could reasonably conclude L.S. had knowledge of the ongoing abuse Roman committed against the minors and did nothing to protect them. Substantial evidence supports the court's findings that it was in the minors' best interests to terminate the guardianship.

C

L.S. also argues the court should have ordered reunification services because she is the only parent the minors have known and is the most realistic placement option for them. However, a court may terminate a probate guardianship without first providing services to the guardian. (*In re Merrick V.* (2004) 122 Cal.App.4th 235, 253; *In re Alicia O.*, *supra*, 33 Cal.App.4th at pp. 182-183 [there is no requirement for reunification services in the statutory scheme].) The court here terminated L.S.'s probate guardianship and there is no basis for requiring services. Further, the Agency had offered L.S. voluntary services after she became the minors' guardian. She did not avail herself of the services. The court did not err by denying reunification services for L.S.

DISPOSITION

The judgment is affirmed.

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MCDONALD, J.

WE CONCUR:

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NARES, Acting P. J.

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AARON, J.